IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No.92 of 1993
Date of decision : 7.12.2006

Shri Khushi Ram ASI (Retd.)

.....Petitioner

Vs.

State of Punjab & others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

...

Present : Mr. H.S.Mann, Advocate
for the petitioner.

Mr. Mehardeep Singh, Asstt. Advocate General, Punjab
for the respondents.

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MAHESH GROVER, J. (O)

The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari quashing orders Annexures P.1 and P.2.

By virtue of the aforesaid orders the petitioner had been retired prematurely from service and his representation against the same had been rejected.

The petitioner had joined the Police Department, Punjab as a Constable on 18.4.1966 and was promoted as a Head Constable on 9.6.1980 after he had successfully passed the Lower School Course in the year 1979. He was confirmed as Head Constable in 1987. Subsequent thereto the petitioner passed Intermediate Promotion Course and was promoted as Asstt. Sub Inspector in January, 1990. After barely one year and five months thereof, the impugned order Annexure P.1 was passed prematurely retiring him

from service and his representation against the same was rejected vide order Annexure P.2. The petitioner has assailed the afore-mentioned orders on the ground that the same are arbitrary as he had no adverse entry to his credit and even though the orders have purportedly been passed in the public interest, yet they are unsustainable as no reasons have been given to justify the premature retirement in public interest.

The respondents have filed the written statement wherein the passing of the impugned orders was sought to be justified by saying that the continuation of the petitioner in service was damaging image of the police as on 21.5.1991 he had helped a lady of ill-repute when she was loitering in a public place along with some men. Besides, he had been awarded a punishment of censure in 1983 and two warnings in 1983 and 1990, respectively which orders were attached as Annexures R/2, R/2-A, R/3, R/3-A, R/4 and R/4-A.

Mr. Mann, learned counsel for the petitioner contended that the impugned orders were totally arbitrary, inasmuch as the petitioner had no adverse entry to his credit. Besides, the orders referred to in the written statement pertaining to the awarding of punishment of censure and warning were washed off when the petitioner was promoted as Asstt. Sub Inspector in the year 1990 and only one order awarding a warning was passed subsequent thereto.

On the other hand, learned counsel for the State sought to justify the orders by contending that the same had been passed by invoking Rule 3(1)(a) of the Punjab Civil Service Rules, 1975 which reads as under :

"The appropriate authority shall, if it is of the opinion

that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing to retire that employee on the date on which he completes twenty five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice."

I have heard the learned counsel for the parties at length.

The record of the case was summoned to see as to whether there was any adverse remarks against the petitioner apart from the orders of warning and censure placed on record with the written statement. Learned counsel for the respondents candidly admitted that there were no adverse remarks except for the orders which were relied upon in the written statement.

The concept of premature retirement presupposes the cessation of efficiency, competence and utility of a government employee who is sought to be ejected from service, in the interest of public administration. The objective is not stigmatic or awarding of a punishment. To establish whether such a person has lost the standard of efficiency expected of him or of a public servant, the entire service record is to be seen. The Hon'ble Supreme Court in **State of Punjab v. Gurdas Singh** (1998) 4 Supreme Court Cases 92 has held that the order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily which order is passed on the subjective satisfaction of the government and for formulating such an opinion the entire record of service has to be considered before taking a decision. More importance has to be

attached to the record and performance during the later years and if a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotions are based upon merit (selection) and not upon seniority.

The observations of the Hon'ble Supreme Court were in fact a reiteration of the observations made in **Baikuntha Nath Das v. Chief Distt. Medical Officer** (1992) 2 SCC 299 wherein the following principles had been laid down:

> "34. The following principles emerge from the above discussion:
>
> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
>
> (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
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> (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary – in the sense that no reasonable

person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv)The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v)An order of compulsory retirement is not liable to be quashed by a court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above."

In the absence of any adverse reports the petitioner could not have been retired compulsorily and the impugned orders are clearly arbitrary.

No doubt, the powers of the government to retire a person compulsorily are absolute as can be seen from Rule 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975, but this

right has to be exercised only if in the opinion of the appropriate authority it is in public interest to retire such an employee. The opinion so formed has to be scrutinised with great circumspection as retirement of a public servant under the aforesaid rules is neither a punishment nor a stigma so as to attract the provisions of Article 311 (2) of the Constitution but has the drastic consequence of removing him from service. The object obviously is to weed out the dead wood in order to maintain efficiency in the service. It is in this backdrop that the entire service record should be assessed subjectively and the order of premature retirement has not to be passed on the basis of a stray entry here or there. If a promotion has resulted subsequent to awarding of any punishment or passing of an adverse remarks, the same loses its relevance.

That apart, Annexure P2 is the order by which the representation of the petitioner was rejected. It gives no reason whatsoever except to say that the SSP was competent to pass such orders. The filing of representation is a valuable right available to a government servant and it is but expected of the authorities dealing with such representation that they are considered and disposed of by giving valid and cogent reasons to justify an order against which such a representation has been made. Application of mind reflected in the reasons while dealing with the representation would go a long way in erasing the grievance of the affected employee. Hence on both counts i.e. the order being arbitrary having been passed without any justifiable basis and on the ground that the representation of the petitioner has been rejected without any cogent and justifiable reason,

the impugned orders Annexures P.1 and P.2 are hereby set aside.

As a consequence thereof the petitioner shall be entitled to all the consequential benefits including pay, allowances, increments, seniority, etc. to which he would have been entitled to had the impugned orders not been passed.

The writ petition is accordingly allowed in the aforestated terms with no order as to costs.

7.12.2006 (MAHESH GROVER)
JUDGE

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